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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,534	10/12/2005	Frederic Plessis	0688-1001	1504
465 7590 06/18/2009 YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			EXAMINER EPSTEIN, BRIAN M	
			ART UNIT 3628	PAPER NUMBER
			MAIL DATE 06/18/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/524,534

**Applicant(s)**

PLESSIS ET AL.

**Examiner**

BRIAN EPSTEIN

**Art Unit**

3628

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-27 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20050214 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Status of the Claims**

1. Claims 14-26 were previously pending in this application. Claims 14-26 were amended and claim 27 was newly added in the reply filed March 3, 2009.

### ***Response to Amendment***

2. The specification was previously objected to due to informalities. Examiner has reviewed applicant's amendments to the specification, the addition of appropriate headings, and thanks applicant for appropriately amending the specification. Examiner hereby withdraws the previously filed objection to the specification.

### ***Response to Arguments***

3. Applicant's arguments, see page 11 of the Remarks, filed March 3, 2009, with respect to the rejection of claims 14-23 under 35 U.S.C. §101 have been fully considered and are persuasive. The previous rejection of claims 14-23 under §101 has been withdrawn. However, examiner has applied a new rejection as to claims 14-23 under §101 which can be found below.
4. Applicants arguments concerning the rejection of claim 24 under §101 as claiming non statutory subject matter has been considered and is persuasive. Examiner has withdrawn the previously filed claim rejection as to claim 24 under §101 and thanks applicant for amending claim 24 to appropriately recite a system.

5. Applicants arguments concerning the rejection of claim 25 under §101 as claiming non statutory subject matter has been considered and is persuasive. Examiner has withdrawn the previously filed claim rejection as to claim 25 under §101 and thanks applicant for amending claim 25 to recite the steps as being performed by an electronic calculator which renders the method claim statutory under *Bilski*.

6. Applicant's arguments with respect to claims 14-23 under 35 U.S.C. §112-2<sup>nd</sup> Paragraph have been considered but are moot in view of the new grounds of rejection. Since claim 14 has been extensively amended, examiner has added new rejections under §112 in light of those amendments, found below.

7. Applicant's arguments with respect to claim 24 under 35 U.S.C. §112-2<sup>nd</sup> Paragraph have been considered but are moot in view of the new grounds of rejection. Since claim 24 has been extensively amended, examiner has added new rejections under §112 in light of those amendments, found below.

8. Applicant's arguments with respect to claim 25 under 35 U.S.C. §112-2<sup>nd</sup> Paragraph are persuasive. Examiner hereby withdraws the previously filed claim rejection under §112-2<sup>nd</sup> paragraph as to claim 25. However, examiner has rejected claim 26 below under §112-2<sup>nd</sup> paragraph which depends from claim 25 due to the extensive amendment of claim 25.

9. Applicant's arguments with respect to claims 14-26 under 35 U.S.C. §103(a) have been considered but are moot in view of the new ground(s) of rejection. Examiner respectfully requests applicant to consider the art rejection applied to the amended claims below

**Examiners Note:** Examiner has attempted to point out the various issues with §101 and §112 below but notes other issues may be relevant which are not explicitly pointed out below. Examiner respectfully suggests that, in order to advance prosecution of this case, that an interview prior to filing any potential request for continued examination, may be beneficial if applicant so elects in order to clear up issues concerning §101 and §112 to allow examiner to better focus on the patentability of applicants invention concerning the prior art.

***Claim Objections***

10. Claim 25 is objected to because of the following informalities: The preamble recites, "a method defining a formula for calculating..." However, the claimed method steps recite "acquiring said formula," and "converting said formula." Since the method recites the steps of acquiring and converting, the method itself does not in any way define a formula. The preamble to claim 25 is misleading and examiner respectfully requests applicant change it to more closely recite the claimed method. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

11. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

12. Claims 14-23 and 27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 14 requires a recording medium, which stores a program which is executable by a computer. Claims 14-23 and

27 are rejected under 35 U.S.C. 101 because the claims are considered hybrid claims. See MPEP §2173.05(p) II.

Examiner notes applicant is claiming a series of modules including an acquisition module, and a converting module. This language is suggestive of software per se or a system comprising a series of modules. It appears the electronic calculator, although stored on a recording medium, is little more than software for defining a calculation formula since the calculator comprises various modules. However, since the electronic calculator also includes a first information storage means, this language suggests the electronic calculator is a system. Also, examiner points out, the calculator defines the calculation formula but also comprises an acquisition and conversion module for acquiring and converting the formula for use in a computer system.

Examiner further notes at least as to claims 16-22, that applicant appears to be claiming software per se. That is, claims 16-22 do not claim what the computer readable medium causes the computer to do, but instead claim the programming creation capabilities of the acquisition module software and what the software would do under control of the user. Applicant is reminded that software is per se unpatentable. That is, it is not statutory under §101, to claim for example, programming language software that a user can use to create software with the capability to perform some functionality. It is statutory, however, to claim what steps the program which results from the programming performs when appropriately tied to a computer readable storage medium which causes a computer to perform the recited steps.

Please see, *In re Warmerdam*, 33 F.3d 1354, 1361, 31 USPQ2d 1754, 1760 (Fed. Cir. 1994) and MPEP § 2106.01 for further guidance and discussion on computer-related nonstatutory subject matter.

***Claim Rejections - 35 USC § 112-2<sup>nd</sup> Paragraph***

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

14. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 14 begins by requiring the step of "defining the calculation formula and storing the...calculation formula in a storing means..." The next limitation requires "acquiring the calculation formula, the formula being in a form of a tree structure..."

Examiner notes this language is indefinite since it is unclear as to what is required by the claim language. Since applicant is claiming a recording medium storing instructions executable by a computer to perform the functionality of an electronic editor, it appears applicant is attempting to claim a program which allows a person to create a costing program. Claim 14 recites an electronic calculator which defines a formula, and then recites an acquisition module that acquires the formula. Since the computer is instructed to perform the step of defining a formula, the step of acquiring the formula does not make sense since the formula is already found in the computer.

Examiner notes that computer medium claims generally recite the steps of a method which the medium causes the computer to perform. That is, if the computer is

instructed to define the calculation formula and then store the formula, it makes little sense to then instruct the computer to then acquire the formula which has already been defined as being in the form of a tree structure.

Claim 14 appears to claim both an electronic editor which allows a user to define a cost calculation formula (see, for example, dependent claims 16-22) and an acquiring module which acquires a formula which has already been constructed and then convert the acquired formula into a format readable by a computer system and then stores the converted acquired formula (see, for example, dependent claim 15).

15. Claims 16-22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 16-22 recites the creation of nodes as controlled by a user. This language is indefinite since claim 14, which claims 16-22 depend from recites a storage medium that controls a computer to perform steps. Steps 16-22 recite creation of various nodes upon which the calculation formula is based. However, claims 16-22 recite creation of the various nodes under control of the user. This language is indefinite since applicant is claiming a computer readable medium that causes a computer to function as a electronic editor by performing certain steps. Steps 16-22 do not define in more detail what those steps entail nor do they require additional steps to be performed by the computer, they merely provide what the acquisition module could possibly do under the control of the user. If the user does nothing, then none of claims 16-22 occur.



Further, claims 16-22 appear to recite the creation of the tree structure nodes. However, examiner notes that claim 14 which claims 16-22 depend already claim the formula including the nodes and their construction. This language is indefinite since the tree structure is already included in the computer readable medium, it would be illogical to then create the tree structure under control of the user.

16. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 23 recites wherein the editor further comprises a storage means. This is indefinite since it is illogical for a computer readable medium to comprise a storage means since a computer readable medium *is* a storage means that when instructions found on such medium is operated by a computer, performs a certain function/step.

17. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 24 recites, "a storage element containing a calculation formula..." and then recites, "an acquisition module acquiring said calculation formula," in the same claim limitation. If the storage element already contains the calculation formula, it makes little sense to then acquire the formula. Examiner suggests applicant amend the limitation to read, "*a storage element comprising an acquisition module...*" etc. Examiner interprets the claim language as recommended below for the purposes of prior art analysis in this office action.

Claim 24 is further rejected as being indefinite since the language "the storage element storing information containing the calculation formed...the formula for calculating the price" appears twice in the claim and further, makes little logical sense as argued above as to the storage element already containing the calculation formula and then acquiring the formula. Further, the limitation, "the formula for calculating the price of the service using the information on consumption of the services stored in the receiver," is the intended use of the acquired formula, the receiving storing consumption variables, and the electronic calculating unit and is thus accorded little patentable weight.

18. Claim 24 recites the limitation "executed by the costing system to establish the price..." in the third and fourth lines of claim 24 on page 8 of the claims. There is insufficient antecedent basis for this limitation in the claim. Examiner has amended, for the purposes of prior art analysis below, the preamble of claim 24 to recite, *a costing system* for costing automatically establishing... below in the rejection of claim 24 under §103(a). This amendment provides sufficient antecedent basis for the above rejected limitation.

Claim 24 is further rejected as having insufficient basis for "conditional activation operation," of the nodes at the bottom of claim 24. The tree structure, as acquired by the acquiring module does not recite any conditional activation operations, instead, the nodes/arcs define the price calculation operations and order by which to do those calculations.

19. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 25, to which claim 26 depends, recites a method for acquiring and converting a formula in the format of a tree structure. Claim 26 appears to claim steps of defining the formula. However, since claim 25 provides acquiring a formula which has already been defined and then converts the formula to allow readability by a electronic costing system, claim 26 is illogical. That is, claim 26 appears to be directed towards a user selecting nodes, connecting nodes and defining the operation of the nodes and not to the acquired formula.

***Claim Rejections - 35 USC § 103***

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Examiners Note:** Examiner has attempted to apply art below which most closely teaches the claims as written.

22. Claims 14-23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tiefenbrun et al. (US 2003/0105771) in view of Dunn (US 2002/0065740) and further in view of Feather (US 4,205,371).

23. As per **claim 14**, Tiefenbrun teaches a recording medium storing a program of instructions executable by a computer to control the computer to function as an electronic editor for a calculation formula for calculating the price of a service by defining said calculation formula in a format directly readable by an electronic costing system, the electronic costing system establishing with the aid of said calculation formula, the price of a service using information on the service consumed contained in consumption variables, said editor comprising:

a. an electronic calculator defining the calculation formula and storing the defined calculation formula in a first information storing means (Paragraphs 0032-0033).

Tiefenbrun does not explicitly teach, wherein the calculator comprises: an acquisition module that acquires said calculation formula, said calculation formula being in the form of a tree structure formed from nodes, the nodes connected to one another by arcs, each node being associated with a pricing calculating operation executed by the costing system to establish the price of the service by an ordered relationship, an order in which said calculating operations are carried out by the electronic costing system, and; a module automatically converting the acquired tree structure into a directly readable format by the electronic costing system and storing the converted tree structure in the first information storing means.

However, Dunn teaches a similar computer readable medium, and the computer readable medium of Dunn indeed includes, wherein the calculator comprises: an acquisition module that acquires said calculation formula, said calculation formula being in the form of a tree structure formed from nodes, the nodes connected to one another by arcs, each node being associated with a pricing calculating operation executed by the costing system to establish the price of the service by an ordered relationship, an order in which said calculating operations are carried out by the electronic costing system (Paragraph 0037; Paragraph 0044; Paragraphs 0074-0077).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated, wherein the calculator comprises: an acquisition module that acquires said calculation formula, said calculation formula being in the form of a tree structure formed from nodes, the nodes connected to one another by arcs, each node being associated with a pricing calculating operation executed by the costing system to establish the price of the service by an ordered relationship, an order in which said calculating operations are carried out by the electronic costing system, in accordance with the teachings of Dunn, in order to create a cost calculation system quickly and without user error in order to save user time, since so doing could be performed readily and easily by any person of ordinary skill in the art with neither undue experimentation, nor risk of unexpected results.

Tiefenbrun in view of Dunn does not explicitly teach, a module automatically converting the acquired tree structure into a directly readable format by the electronic

costing system and storing the converted tree structure in the first information storing means.

However, Feather teaches a similar computer readable medium and the computer readable medium of Feather indeed includes, a module automatically converting the acquired tree structure into a directly readable format by the electronic costing system and storing the converted tree structure in the first information storing means (Abstract; Column 1, lines 30-68).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated, a module automatically converting the acquired tree structure into a directly readable format by the electronic costing system and storing the converted tree structure in the first information storing means, in accordance with the teachings of Feather, in order to allow the tree structured pricing to be applied to variable computer systems in order to speed use of the pricing, since so doing could be performed readily and easily by any person of ordinary skill in the art with neither undue experimentation, nor risk of unexpected results.

24. As per **claim 15**, Tiefenbrun further teaches, wherein the calculator further comprises a module that displays the tree structure during tree structure acquisition or when the tree structure is acquired (Paragraph 0032).

25. As per **claim 16**, Tiefenbrun further teaches, wherein the acquisition module creates under control of the user, a first level node in said tree structure solely associated with an operation for activating child nodes of said first level node in response to receiving a new value for one of the consumption variables processed by a

calculation operation associated with one of the child nodes (Abstract; Paragraphs 0032-0033; Figure 1).

26. As per **claim 17**, Tiefenbrun further teaches, wherein the acquisition module creates under control of the user, a first level node in said tree structure, solely associated with the operation for activating child nodes of the first level nodes and the calculation operation associated therewith, at predetermined time intervals (Abstract; Paragraphs 0032-0033; Figure 1). Please also see, (Dunn, Paragraphs 0074-0075).

27. As per **claim 18**, Tiefenbrun further teaches, wherein the acquisition module creates, under control of the user, a processing node in said tree structure, solely associated with an operation for calculating a new value from the values of the consumption variables and pre-existing calculated variables and for allocating the calculated new value to one of a consumption variable, pre existing variable, and a new calculated variable (Abstract; Paragraphs 0032-0033; Figure 1).

28. As per **claim 19**, Tiefenbrun further teaches, wherein the acquisition module creates, under control of the user, a decision node solely associated with a conditional activation operation of all of its corresponding child nodes and the calculating operation associated therewith, using the value of a consumption variable or a calculated variable (Abstract; Paragraphs 0032-0033; Figure 1).

29. As per **claim 20**, Tiefenbrun further teaches, wherein the acquisition module creates under the control of the user, a split node solely associated with an operation for extracting from the value of a consumption variable or a calculated variable, a range of values either between a lower limit and an upper limit, or outside the lower and upper

limits, the child nodes processing the range of values extracted (Abstract; Paragraphs 0032-0033; Figure 1).

30. As per **claim 21**, Tiefenbrun further teaches, wherein the acquisition module creates, under control of a user, a node in the tree structure, solely associated with an operation for unit conversion of a calculated value (Abstract; Paragraphs 0032-0033; Figure 1).

31. As per **claim 22**, Tiefenbrun further teaches, wherein the acquisition module creates under the control of a user, an ending of the tree structure, solely associated with an operation for calculating a price and with an operation for stopping the costing system from passing through the tree structure (Abstract; Paragraphs 0032-0033; Figure 1).

32. As per **claim 23**, Tiefenbrun further teaches, wherein the editor further comprises second information storing means containing a library of prestored nodes associated respectively with predefined parameterisable operations and wherein the acquisition module comprises a sub-module for selecting nodes contained in the library, a sub module for connecting nodes selected with aid of selection sub module to a father node and a sub module for parametering the parameterisable operations associated with the nodes in the library (Paragraph 0032).

33. As per **claim 27**, Tiefenbrun does not explicitly teach, wherein the formula for calculating the price includes conditional calculating rules having a form of: if condition 1 exists, then action 1 takes place, wherein condition 1 is a logical function of which the



result is true or false, and action 1 is a mathematical function of the calculation of the price.

However, Dunn teaches a similar computer readable medium and the computer readable medium of Dunn indeed includes, wherein the formula for calculating the price includes conditional calculating rules having a form of: if condition 1 exists, then action 1 takes place, wherein condition 1 is a logical function of which the result is true or false, and action 1 is a mathematical function of the calculation of the price (Paragraphs 0052-0053; Paragraph 0055).

Therefore, it would have been obvious to one of ordinary skill in the art to have incorporated, wherein the formula for calculating the price includes conditional calculating rules having a form of: if condition 1 exists, then action 1 takes place, wherein condition 1 is a logical function of which the result is true or false, and action 1 is a mathematical function of the calculation of the price, in accordance with the teachings of Dunn, in order to perform more accurate cost estimates, since so doing could be performed readily and easily by any person of ordinary skill in the art with neither undue experimentation, nor risk of unexpected results.

34. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunn (US 2002/0065740) in view of Feather (US 4,205,371).

35. As per **claims 24 and 25**, Dunn teaches *an costing system and method* for costing automatically establishing the price of a service comprising:

a. a receiver storing consumption variables containing information on consumption of the service (Paragraph 0044; Paragraph 0046) (as only to claim 24);

b. a storage element *comprising an acquisition* module acquiring a calculation formula, the formula being in the form of a tree structure formed from nodes, the nodes connected to one another by arcs, each node being associated with a pricing calculating operation executed by the costing system to establish the price of the service, the arcs defining, by an ordered relationship, an order in which said operations are carried out by the electronic costing system (Paragraph 0037; Paragraph 0044; Paragraphs 0074-0077) (as to claims 24 and 25), the storage element storing information containing the calculation formula defined by an electronic editor, the formula for calculating the price of the service using the information on consumption of the service stored in the receiver (Paragraph 0037; Paragraph 0044; Paragraphs 0074-0077), and;

c. an electronic calculating unit configured for executing operations associated with the nodes and endings of the calculation formula, in response to information received by the receiver so as to pass through the tree structure of the calculation formula from the root node to at least one of the endings by executing successively the conditional activation operation of the father nodes, then solely the conditional activation operations associated with the activated child nodes until at least one ending associated with the operation to calculate a price has been activated and to execute the ending to establish automatically the price of the service (Paragraph 0037; Paragraph 0044; Paragraphs 0074-0077) (as only to claim 24).

Dunn does not explicitly teach, *wherein a storage element* comprises a module *that automatically converts* the acquired tree structure into a directly readable format by the electronic costing system and *stores* the converted tree structure in the storage element (as to claims 24 and 25).

However, Feather teaches a similar system and method and the system and method of Feather indeed includes, *wherein a storage element* comprises a module *that automatically converts* the acquired tree structure into a directly readable format by the electronic costing system and *stores* the converted tree structure in the storage element (Abstract; Column 1, lines 30-68).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated, *wherein a storage element* comprises a module *that automatically converts* the acquired tree structure into a directly readable format by the electronic costing system and *stores* the converted tree structure in the storage element, in accordance with the teachings of Feather, in order to allow the tree structured pricing to be applied to variable computer systems in order to speed use of the pricing and further since converting formulas for use in a computer system is well known, since so doing could be performed readily and easily by any person of ordinary skill in the art with neither undue experimentation, nor risk of unexpected results.

36. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dunn (US 2002/0065740) in view of Feather (US 4,205,371) as applied to claim 25 above, and further in view of Tiefenbrun et al. (US 2003/0105771).

37. As per **claim 26**, Dunn in view of Feather does not explicitly teach, a substep of selecting a node in a library of nodes of prestored nodes, the prestored nodes being associated respectively with pre-defined parameterisable operations, a subset of connecting the selected node during the selection substep to a father node, and; a substep of parametering the operation of the node connected to the father node during the connection substep.

However, Tiefenbrun teaches a similar method and the method of Tiefenbrun indeed includes, a substep of selecting a node in a library of nodes of prestored nodes, the prestored nodes being associated respectively with pre-defined parameterisable operations, a subset of connecting the selected node during the selection substep to a father node, and; a substep of parametering the operation of the node connected to the father node during the connection substep (Paragraphs 0032-0034).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated, a substep of selecting a node in a library of nodes of prestored nodes, the prestored nodes being associated respectively with pre-defined parameterisable operations, a subset of connecting the selected node during the selection substep to a father node, and; a substep of parametering the operation of the node connected to the father node during the connection substep, in accordance with the teachings of Tiefenbrun, in order to advantageously modify the formula at any time in order to change ultimate pricing as competitive forces dictate, since so doing could be performed readily and easily by any person of ordinary skill in the art with neither undue experimentation, nor risk of unexpected results.

***Conclusion***

38. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

39. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN EPSTEIN whose telephone number is (571)270-5389. The examiner can normally be reached on Monday-Thursday 7:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. E./  
Examiner, Art Unit 3628  
June 11, 2009

/John W Hayes/  
Supervisory Patent Examiner, Art Unit 3628